

or by ATF ruling, formulas for compounds in which alcohol is a prescribed quantitative ingredient, which are stated in the current revisions or editions of the United States Pharmacopoeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.), shall be considered as approved formulas and may be used as formulas for drawback products without the filing of ATF Form 5154.1.

(b) *Exceptions.* Alcohol (including dehydrated alcohol and dehydrated alcohol injection), U.S.P.; alcohol and dextrose injection, U.S.P.; and tincture of ginger, H.P.U.S., have been found to be fit for beverage use and are disapproved for drawback. All attenuations of other H.P.U.S. products diluted beyond one part in 10,000 ("4x") are also disapproved for drawback, unless the manufacturer receives approval for a formula submitted on Form 5154.1 in accordance with this subpart. The formula for such attenuations shall be submitted with a sample of the product and a statement explaining why it should be classified as unfit for beverage use.

§ 17.133 Food product formulas.

Formulas for nonbeverage food products on ATF Form 5154.1 may be approved if they are unfit for beverage purposes. Approval does not authorize manufacture or sale contrary to State law. Examples of food products that have been found to be unfit for beverage purposes are stated below:

(a) *Sauces or syrups.* Sauces, or syrups consisting of sugar solutions and distilled spirits, in which the alcohol content is not more than 12 percent by volume and the sugar content is not less than 60 grams per 100 cubic centimeters.

(b) *Brandied fruits.* Brandied fruits consisting of solidly packaged fruits, either whole or segmented, and distilled spirits products not exceeding the quantity and alcohol content necessary for flavoring and preserving. Generally, brandied fruits will be considered to have met these standards if the container is well filled, the alcohol in the liquid portion does not exceed 23 percent by volume, and the liquid por-

tion does not exceed 45 percent of the volume of the container.

(c) *Candies.* Candies with alcoholic fillings, if the fillings meet the standards prescribed for sauces and syrups by paragraph (a) of this section.

(d) *Other food products.* Food products such as mincemeat, plum pudding, and fruit cake, where only sufficient distilled spirits are used for flavoring and preserving; and ice cream and ices where only sufficient spirits are used for flavoring purposes. Also food adjuncts, such as preservatives, emulsifying agents, and food colorings, that are unfit for beverage purposes and are manufactured and used, or sold for use, in food.

§ 17.134 Determination of unfitness for beverage purposes.

The appropriate ATF officer has responsibility for determining whether products are fit or unfit for beverage purposes within the meaning of 26 U.S.C. 5131. This determination may be based either on the content and description of the ingredients as shown on ATF Form 5154.1, or on organoleptic examination. In such examination, samples of products may be diluted with water to an alcoholic concentration of 15% and tasted. Sale or use for beverage purposes is indicative of fitness for beverage use.

§ 17.135 Use of specially denatured alcohol (S.D.A.).

(a) *Use of S.D.A. in nonbeverage or intermediate products*—(1) *General.* Except as provided in paragraph (b) of this section, the use of specially denatured alcohol (S.D.A.) and taxpaid spirits in the same product by a nonbeverage manufacturer is prohibited where drawback of tax is claimed.

(2) *Alternative formulations.* No formula for a product on ATF Form 5154.1 shall be approved for drawback under this subpart if the manufacturer also has on file an approved ATF Form 1479-A or Form 5150.19, Formula for Article Made With Specially Denatured Alcohol or Rum, pertaining to the same product.

(b) *Use of S.D.A. in ingredients*—(1) *Purchased ingredients.* Generally, purchased ingredients containing S.D.A.

may be used in nonbeverage or intermediate products. However, such ingredients shall not be used in medicinal preparations or flavoring extracts intended for internal human use, where any of the S.D.A. remains in the finished product.

(2) *Self-manufactured ingredients.* Self-manufactured ingredients may be made with S.D.A. and used in nonbeverage or intermediate products, provided—

(i) No taxpaid spirits are used in manufacturing such ingredients; and

(ii) All S.D.A. is recovered or dissipated from such ingredients prior to their use in nonbeverage or intermediate products. (Recovery of S.D.A. shall be in accordance with subpart K of part 20 of this chapter; recovered S.D.A., with or without its original denaturants, shall not be reused in nonbeverage or intermediate products.)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 17.136 Compliance with Food and Drug Administration requirements.

A product is not a medicine, medicinal preparation, food product, flavor, flavoring extract, or perfume for nonbeverage drawback if its formula would violate a ban or restriction of the U.S. Food and Drug Administration (FDA) pertaining to such products. If FDA bans or restricts the use of any ingredient in such a way that further manufacture of a product in accordance with its formula would violate the ban or restriction, then the manufacturer shall change the formula and resubmit it on ATF Form 5154.1. This section does not preclude approval for products manufactured solely for export or for uses other than internal human consumption (e.g. tobacco flavors or animal feed flavors) in accordance with laws and regulations administered by FDA. Under § 17.123, manufacturers may be required to demonstrate compliance with FDA requirements applicable to this section.

§ 17.137 Formulas disapproved for drawback.

A formula may be disapproved for drawback either because it does not prescribe appropriate ingredients in sufficient quantities to make the product unfit for beverage use, or because

the product is neither a medicine, a medicinal preparation, a food product, a flavor, nor a flavoring extract. The formula for a disapproved product may be used as an intermediate product formula under § 17.126. No drawback will be allowed on distilled spirits used in a disapproved product, unless that product is later used in the manufacture of an approved nonbeverage product. In the case of a product that is disapproved because it is fit for beverage use, any further use or disposition of such a product, other than as an intermediate product in accordance with this part, subjects the manufacturer to the qualification requirements of parts 1 and 19 of this chapter.

Subpart G—Claims for Drawback

§ 17.141 Drawback.

Upon the filing of a claim as provided in this subpart, drawback shall be allowed to any person who meets the requirements of this part. Drawback shall be paid at the rate specified by 26 U.S.C. 5134 on each proof gallon of distilled spirits on which the tax has been paid or determined and which have been used in the manufacture of nonbeverage products. The drawback rate is \$1.00 less than the effective tax rate. Drawback shall be allowed only to the extent that the claimant can establish, by evidence satisfactory to the appropriate ATF officer, the actual quantity of taxpaid or tax-determined distilled spirits used in the manufacture of the product, and the effective tax rate applicable to those spirits. Special tax as a manufacturer of nonbeverage products shall be paid before drawback is allowed.

§ 17.142 Claims.

(a) *General.* The manufacturer must file claim for drawback with the appropriate ATF officer who has the authority to approve or disapprove claims. A separate claim shall be filed for each place of business. Each claim shall pertain only to distilled spirits used in the manufacture or production of nonbeverage products during any one quarter of the tax year. Unless the manufacturer is eligible to file monthly claims (see §§ 17.143 and 17.144), only one claim per quarter may be filed for each place